

Message Text

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PAGE 01 MOSCOW 03294 031617Z

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TAGS: PARM, US, UR

SUBJECT: TTBT/PNE NEGOTIATIONS: LEGAL ARTICLES

TTBT/PNE DELEGATION MESSAGE NO. 101

1. MATHESON AND LAPTEV DISCUSSED REMAINING DIFFERENCES OVER ARTICLE XII OF PROTOCOL DURING MORNING OF MARCH 3. CONCERNING EXCEPTION FOR "PROFESSIONAL OR COMMERCIAL ACTIVITY" IN PARA 2(B), LAPTEV LISTED PARADE OF HORRIBLES SUCH AS MOONLIGHTING PHOTOGRAPHERS AND LAWYERS OR DOCTORS PERFORMING ABORTIONS ON THE SIDE (HE APOLOGIZED MENTIONING LATTER POINT, BUT HIS MAIN CONCERN (AS HAS BEEN CASE IN EVERY DISCUSSION WITH HIM) SEEMED TO BE TO STICK TO LANGUAGE WITH PRECEDENT IN SOME OTHER AGREEMENT (HIS IS TAKEN FROM ARTICLE 31 OF VIENNA CONVENTION OF DIPLOMATIC RELATIONS). MATHESEON SUGGESTED ARTICLE 42 WAS BETTER MODEL AND LATER PROVIDED FOLLOWING INFORMAL SUBSTITUTE TEXT:

BEGIN TEXT:

"WHILE THEY ARE IN THE TERRITORY OF THE PARTY CARRYING OUT THE EXPLOSION, DESIGNATED PERSONNEL SHALL NOT PRACTICE FOR PERSONAL PROFIT ANY PROFESSIONAL OR COMMERCIAL ACTIVITY UNRELATED TO THEIR OFFICIAL FUNCTIONS ...". END TEXT

THIS HAS ADVANTAGE OF INCLUDING "PERSONAL PROFIT" QUALIFICATION AND ELIMINATING POSSIBILITY OF SOVIET ADMINISTRATIVE OR JUDICIAL

SECRET

SECRET

PAGE 02 MOSCOW 03294 031617Z

ACTION AGAINST DESIGNATED PERSONNEL. LAPTEV IS CONSIDERING IT.

2. CONCERNING VEHICLES NOT OPERATED BY DESIGNATED PERSONNEL, SOVIET LAW APPARENTLY IMPOSES LIABILITY ON OWNER OF VEHICLE FOR ACCIDENTS OF OPERATOR. MATHESON SUGGESTED THAT DAMAGE SUITS AGAINST DESIGNATED PERSONNEL WERE NOT BEST MEANS OF ENSURING COMPENSATION FOR INJURED VICTIMS, AND INSTEAD SUGGESTED FOLLOWING INFORMAL TEXT, WHICH WOULD FOLLOW THAT IN PARA 1 ABOVE.

BEGIN TEXT:

... NOR SHALL THEY OWN OR OPERATE ANY VEHICLE IN THAT TERRITORY EXCEPT IN ACCORDANCE WITH THE LAWS OF THAT PARTY CONCERNING INSURANCE OR INDEMNIFICATION FOR DAMAGES ARISING OUT OF ANY ACCIDENT WHICH MIGHT BE CAUSED BY SUCH VEHICLE. END TEXT.

THIS PRESUMABLY ONLY RESTATES PRESENT SITUATION IN ANY CASE. LAPTEV CONSIDERING THIS ALSO, BUT MAY BE LESS RECEPTIVE SINCE WE COULD SUGGEST NO PRECEDENT. AS ALTERNATIVE, PRESENT TEXT MIGHT REFER TO "A VEHICLE OWNED OR OPERATED BY DESIGNATED PERSONNEL ..."

3. CONCERNING PERSONAL BAGGAGE, LAPTEV RELUCTANT TO CHANGE HIS FORMULA, WHICH OF COURSE HE DREW FROM ARTICLE 36 OF VIENNA CONVENTION. MATHESON SUGGESTED THAT THIS IGNORED FACT THAT DIPLOMAT'S "PROPERTY" ENJOYED "INVIOABILITY" UNDER ARTICEL 30, AND LAPTEV SEEMED OPEN TO POSSIBILITY OF SAYING SO IN PROTOCOL. WE LATER PROVIDED INFORMAL TEXT COMBINING FIRST SENTENCE OF SOVIET PARA 2(E), US PARA 2(D)(1), AND FOLLOWING:

BEGIN TEXT:

"THE PROPERTY OF DESIGNATED PERSONNEL SHALL OTHERWISE BE INVIOABLEM" END TEXT.

FIRST SENTENCE OF SOVIET LANGUAGE DOES NOT SEEM OBJECTIONABLE IN SUBSTANVE; IT DOES SEEM TO COVER SAME GROUND US US PARA 2(E), HOWEVER, SO WE HAVE SUGGESTED AMENDING 2(E) TO REFER TO "EXEMPTION FROM ALL OTHER TAXES, ETC.".

4. CONCERNING EQUIPMENT, WE PROPOSED LANGUAGE FROM STATE 49859. ANTICIPATING ANOTHER LECTURE FROM LAPTEV ON ABSENCE OF PROVISIONS IN VIENNA CONCENTION ON INSPECTION OF SLIFERS AND SEISMIC EQUIPMENT, TIMERBAEV INTERVENED TO SUGGEST THIS WHOLE QUESTION BE
SECRET

SECRET

PAGE 03 MOSCOW 03294 031617Z

TREATED IN A SEPARATE ARTICLE SO THAT LAPTEV WOULD NOT HAVE TO WORRY ABOUT IT. WE OF COURSE AGREED, AND SUGGESTED A BRIEF REFERENCE IN ARTICLE XII ALONG LINES OF US PARA (D)(2). SOVIET WILL REPLY TO SUBSTNACE OF NEW LANGUAGE LATER.

5. CONCERNING THIRD-STATE QUESTION, BOTH SIDES AGREED IN PRINCIPLE THAT PRESENT PARA 3 COULD BE DELETED AND ARTICLE VII(2) OF TREATY AMENDED TO ADD REFERENCE TO PRIVILEGES AND IMMUNITIES.

AFTER DISCUSSION OF LANGUAGE WITH LAPTEV, WE INFORMALLY SUGGESTED ADDITION OF FOLLOWING TO END OF PRESENT PARA 2: "AND OF THE PRIVILEGES AND IMMUNITIES ENUMERATED IN THAT PROTOCOL." THIS IS SLIGHTLY DIFFERENT FROM PREVIOUS US TEXT, BUT IS PROBABLY BETTER IN THAT IT AVOIDS POSSIBLE MISREADING THAT P AND I NEED ONLY BE PROVIDED TO EXTENT DEEMED NECESSARY FOR IMPLEMENTATION OF OTHER PROVISIONS.

6. WE WILL AIM TO DISCUSS ARTICLE XIV TOMORROW IF WE CAN GET LAPEV AGREEMENT TO MEETING. WE WILL PROPOSE ADDITION OF LANGUAGE TO EFFECT OF THAT IN STATE 49859 OR AT LEAST TRY TO OBTAIN AGREED UNDERSTANDING FROM SOVIETS TO THIS EFFECT.

7. PLEASE ADVISE ASAP IF THERE ARE PROBLEMS WITH ANY OF ABOVE.
STOESSEL

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